IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6475 OF 2005

M/s.Navin Heavy Lifters .. Applicant.
Vs.
M/s.Shakti Online Services
& Others. .. Respondents.

Mr.Rajesh B.Parab for the applicant.
Mr.S.A.Bhagwat for respondent nos.1 and 2.
Mr.P.A.Pol A.P.P. for the State.

CORAM : D.B.BHOSALE, J.
DATED : 21ST JUNE, 2006

P.C.:

. Heard learned counsel for the parties.

2. This application is directed against the order dated 28.6.2005 passed by the learned Special Metropolitan Magistrate dismissing the complaint under section 256 of the Code of Criminal Procedure and consequently acquitting the accused of the offence punishable under section 138 of the Negotiable Instruments Act. It appears that initially the complaint was filed before the Additional Chief Metropolitan Magistrate, 11th Court at Kurla, Mumbai. The case was thereafter transferred to the Special Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai on 4.4.2005. After the case was transferred it was placed before the court on 5.4.2005 when the complainant and his advocate were absent and hence it was adjourned to 13.4.2005. On that date the Court was vacant and hence the case stood adjourned to 24.5.2005. On 24.5.2005 also the Court was vacant and

hence the case was adjourned to 13.6.2005. On 13.6.2005 the complainant and his advocate were absent and hence the matter was adjourned for orders on 28.6.2005, and on 28.6.2005 since the complainant and his advocate were absent the impugned order was passed. The petitioner has specifically contended in the application that the applicant was not aware that the case was transferred from the Additional Chief Metropolitan Magistrate's 11th Court, Kurla, Mumbai to the Special Metropolitan Magistrate's 50th Court, Vikhroli, Mumbai. It is not clear whether there is practise to issue summons to the complainant and accused in the event of transfer of case. However, the fact remains that the case was transferred from learned Magistrate 11th Court, Kurla, Mumbai to learned Magistrate, 50th Court, Vikhroli, Mumbai. Keeping that in view and considering the overall facts and circumstances of the case and that no reply affidavit is filed disputing the statements of the applicant made in the application I am inclined to allow this application hence I pass the following order:

. The impugned order is quashed and set aside. C.C.No.10/SS/2005 is restored to file. The concerned Magistrate shall decide the case on merits in accordance with law.

. The application is, accordingly, disposed of.

(D.B.Bhosale, J.)